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Attorneys for Defendants
Merrill Lynch & Co., Inc., Merrill
Lynch Group, Inc., and Merrill Lynch,
Pierce, Fenner & Smith Incorporated

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

THOMAS J. DEBENEDICTIS

on behalf of himself and all others :
similarly situated :

Plaintiffs,

v.

MERRILL LYNCH & CO., INC.;
MERRILL LYNCH, PIERCE, FENNER :
& SMITH INCORPORATED;
MERRILL LYNCH GROUP, INC.; :
FAM DISTRIBUTORS, INC.; MERRILL
LYNCH INVESTMENT MANAGERS, :
L.P.; FUND ASSET MANAGERS, L.P.,
and PRINCETON SERVICES, INC., :

Defendants.

Civil Action No. 04-404 (JLL)

Honorable Jose L. Linares,
U.S.D.J.

NOTICE OF MOTION

**TO: Arthur Penn, Esq.
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Attorneys for Plaintiff Thomas J. DeBenedictis

PLEASE TAKE NOTICE, that on December 27, 2004 at 9:30 a.m. or as soon thereafter as counsel can be heard, the defendants Merrill Lynch & Co., Inc., Merrill Lynch Group, Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Moving Defendants”) through their attorneys Bressler, Amery & Ross, P.C., and Munger, Tolles & Olson, LLP, will move before the Honorable Jose L. Linares, United States District Judge, at the Martin Luther King, Jr. Federal Building & United States Courthouse, 50 Walnut Street, Newark, New Jersey 07101, for an order dismissing the Amended Class Action Complaint with prejudice pursuant to Federal Rules of Civil Procedure 12(b)(6) and 9(b).

In support of this motion, Moving Defendants will rely upon the Moving Defendants’ Brief in Support of Their Motion to Dismiss, proposed form of Order, the Motion and supporting papers filed concurrently herewith by Defendants FAM Distributors, Inc.; Merrill Lynch Investment Managers L.P.; Fund Asset Managers, L.P., and Princeton Services, Inc., and arguments of counsel in open Court.

PLEASE TAKE FURTHER NOTICE that oral argument is requested.

BRESSLER, AMERY & ROSS

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By: 

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Dated: November 19, 2004